

**EXHIBIT 1**

**Scoliard Declaration**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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In re:	)	Case No. 12-12020 (MG)
	)	
RESIDENTIAL CAPITAL, LLC, <u>et al.</u> ,	)	Chapter 11
	)	
Debtors.	)	Jointly Administered
_____	)	

**DECLARATION OF JENNIFER SCOLIARD, IN-HOUSE SENIOR BANKRUPTCY  
COUNSEL, RESIDENTIAL CAPITAL LLC, IN SUPPORT OF  
DEBTORS' OBJECTION TO MOTION FOR RELIEF FROM  
THE AUTOMATIC STAY FILED BY MICHAEL P. AND STEPHANIE L. DONAGHY**

I, Jennifer Scoliard, declare as follows:

**A. Background and Qualifications**

1. I serve as In-House Senior Bankruptcy Counsel in the legal department (the "**Legal Department**") at Residential Capital, LLC ("**ResCap**"), a limited liability company organized under the laws of the state of Delaware and the parent of the other debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the "**Debtors**"). I have been ResCap's In-House Senior Bankruptcy counsel since October 2012. Prior to October 2012, I served in various legal roles supporting GMAC Mortgage, LLC from January 2008 to October 2012. I joined ResCap in January 2008.

2. In my role as In-House Senior Bankruptcy Counsel at ResCap, I am responsible for the management of all non-routine bankruptcy litigation nationwide. Additionally, as a result ResCap's chapter 11 filing, my role has significantly expanded to include assisting the Debtors and their professional advisors in connection with the administration of the chapter 11 cases, in addition to my litigation work. Specifically, my expanded duties and responsibilities as to the Debtors' chapter 11 cases include, but are not

limited to: (i) frequently communicating with bankruptcy counsel, usually daily, on various mortgage litigation and other matters; (ii) assisting bankruptcy counsel in the analysis of and drafting of responses to motions for relief from stay, objections to various filings, and motions critical to the functions of the Debtors' business; (iii) working with bankruptcy counsel, other in-house attorneys and business personnel on bankruptcy issues impacting the Debtors' business operations; and (iv) providing guidance to the Legal Department regarding orders entered in this case, filings by other parties, and the chapter 11 process.

3. I am authorized to submit this declaration (the "**Declaration**") in support of the *Debtors' Objection to Motion for Relief from the Automatic Stay filed by Michael P. and Stephanie L. Donaghy* (the "**Objection**").<sup>1</sup>

4. Except as otherwise indicated, all statements in this Declaration are based upon my personal knowledge; information supplied or verified by personnel in departments within the Debtors' various business units; my review of the Debtors' case files, books and records as well as other relevant documents; my discussions with other members of the Legal Department; information supplied by the Debtors' consultants; or my opinion based upon experience, expertise, and knowledge of the Debtors' bankruptcy matters, financial condition, and history. In making my statements based on my review of the Debtors' case files, books and records, relevant documents, and other information prepared or collected by the Debtors' employees or consultants, I have relied upon these employees and consultants accurately recording, preparing, collecting, or verifying any such documentation and other information. If I were called to testify as a witness in this matter, I would testify competently to the facts set forth herein.

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<sup>1</sup> Capitalized terms used herein and not otherwise defined shall have the meaning ascribed to them in the Objection.

**B. The Donaghy Bankruptcy Proceeding**

5. Shortly after the Donaghys obtained a loan modification of their mortgage in December 2009, on or about January 13, 2010, the Donaghys filed for bankruptcy in the United States Bankruptcy Court for the District of New Jersey (the “**NJ Bankruptcy Court**”). Approximately two years later, on or about March 13, 2012, the Donaghys filed a motion (the “**Sanctions Motion**”) seeking sanctions against GMAC Mortgage and its outside counsel in the Donaghys’ bankruptcy, Milstead & Associates (“**Milstead**”).

6. The Sanctions Motion was resolved as against Milstead in May of 2012. However, the NJ Bankruptcy Court recognized that it could not act on the Donaghys’ request for monetary sanctions as a result of the commencement of these chapter 11 cases, and continued the hearing on the Sanctions Motion as it related to GMAC Mortgage’s proof of claim until July 10, 2012. Although GMAC Mortgage believed that many of the issues raised by the Donaghys in connection with their mortgage loan account were properly accounted for, GMAC Mortgage nonetheless endeavored to work with the Donaghys in an attempt to bring the Donaghys’ loan back to performing status. In that regard, GMAC Mortgage offered to waive certain postpetition fees and even offered to waive a late payment that was never made.

7. In particular, on July 10, 2012, McCabe Weisberg & Conway, P.C. (“**McCabe Weisberg**”),<sup>2</sup> GMAC Mortgage’s counsel in connection with the Sanctions Motion, sent the Donaghys a detailed, three-page letter responding to eight questions posed by Donaghys relating to their mortgage account. The letter provided a detailed explanation about the accounting of the Donaghys’ escrow account, suspense account, and provided a month-by-month accounting of payments received and the application of those payments to the Donaghys’

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<sup>2</sup> When retained, GMAC Mortgage’s counsel, Joseph Riga, was an attorney at McDowell Riga Posternock, PC. Mr. Riga subsequently moved his practice to McCabe Weisberg.

account. Likewise, on July 25, 2012, McCabe Weisberg sent a detailed email to the Donaghys' addressing additional inquiries regarding the Donaghys' mortgage loan account. This detailed email, while noting that mistakes had been made prior to the filing of the Sanctions Motion, provided a further explanation regarding (i) how the Donaghys' payments had been applied and (ii) how various tax and insurance payments had been applied against the Donaghys' escrow account and (iii) how GMAC Mortgage was prepared to address the Donaghys' concerns with the NJ Bankruptcy Court.

8. At a July 25, 2012 hearing on the Sanctions Motion, the NJ Bankruptcy Court accepted much of GMAC Mortgage's proposal for addressing the concerns raised by the Donaghys and, by order dated August 20, 2012, directed the Debtors to (i) file a new proof of claim, (ii) deem the Donaghys' account current through July 2012, and (iii) remove certain litigation codes from the Donaghys' loan account.<sup>3</sup>

9. Although GMAC Mortgage filed the amended proof of claim in the form approved by the NJ Bankruptcy Court and did not expect that the proof of claim would affect the Donaghys' chapter 13 plan payments, the chapter 13 trustee raised the monthly plan payment. GMAC Mortgage contacted the chapter 13 trustee in an attempt to explain the contents of the revised proof of claim and explain why the Donaghys' monthly plan payments should not be increased. The chapter 13 trustee would not amend her accounting based on these communications. As a result, on October 18, 2012, the NJ Bankruptcy Court held a conference call to address the open issues regarding the amount of the Donaghys' monthly plan payments. On the conference call, GMAC Mortgage explained that the Donaghys' monthly payments

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<sup>3</sup> As a matter of course, when a borrower files an adversary proceeding or institutes a contested matter in a bankruptcy case, the Debtors place certain codes on the borrower's account that stop most correspondence with the borrower, including sending mortgage statements, and require all other departments to obtain permission from the Legal Department before taking certain actions on the account.

should not have been increased. In response, the NJ Bankruptcy Court requested that GMAC Mortgage, LLC file a second amended proof of claim to resolve the Chapter 13 Trustee's confusion. A second amended proof of claim was filed on October 23, 2012.

10. GMAC Mortgage believes it has fully complied with the NJ Bankruptcy Court's August 20 order. GMAC Mortgage has (i) filed an amended proof of claim (ii) removed the litigation codes from the Donaghys' loan account and (iii) brought the Donaghys' account current through July 2012, as required by the NJ Order.<sup>4</sup>

**C. Litigation Pending Against the Debtors**

11. As of October 22, 2012, the Debtors by way of direct claims and counter-claims are defendants, respondents, or are contractually obligated to defend third parties in 1,911 pending litigation and contested foreclosure and bankruptcy matters filed in jurisdictions all around the country. Approximately fifty-nine percent (59%) of these matters concern either (i) defenses asserted in foreclosure, eviction, or borrower bankruptcy proceedings or (ii) title disputes, both of which are exempted from the automatic stay by the Supplemental Servicing Order; fourteen percent (14%) of ResCap's pending litigation and contested foreclosure and bankruptcy matters are not subject to the stay, notwithstanding the Supplemental Servicing Order; twenty-six (26%) are stayed and one percent (1%) are still under review for their status. Thus, approximately seventy-three percent (73%) of ResCap's pending litigation and contested foreclosure and bankruptcy matters are not stayed and continue to proceed in various jurisdictions across the country. This is in addition to the tens of thousands of foreclosure actions and borrower bankruptcies the Debtors are parties to in actions pending throughout the fifty states primarily managed by the Debtors' mortgage default group. Notwithstanding the

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<sup>4</sup> The Donaghys' account is current, as of the date hereof.

application of the Supplemental Servicing Order, there are still a substantial number of cases – approximately 26% of 1,911 (or 496) cases.

**D. Lifting the Automatic Stay Will Interfere With the Chapter 11 Cases**

12. The Legal Department is tasked with managing litigation in which the Debtors are defendants or respondents in state and federal court, including bankruptcy courts, as well as managing litigation for third parties for which the Debtors have a contractual obligation to defend. The Legal Department plays a very active role in analyzing and strategizing on active litigation matters, working with various departments within the Debtors' various regional offices, collecting all documents and information necessary to analyze each case, including, but not limited to, the following: (i) reviewing documents and information related to discovery, (ii) reviewing all draft pleadings and discovery responses, (iii) witness preparation of deposition and trial witnesses, (iv) directing settlement negotiations, (v) coordinating discussion with internal business personnel, (vi) maintaining the Legal Staff database, (vii) coordinating with local litigation counsel and ResCap bankruptcy counsel, (viii) attending mediations and settlement conferences and (ix) preparing for trial. The Legal Department has been the primary group tasked with assisting in the development and implementation of the Supplemental Servicing Order.

13. As a result of the Debtors' bankruptcy filings and the entry of the Supplemental Servicing Order, the Legal Department's responsibilities have increased to include (i) the review and analysis of individual claims as they arise in conjunction with internal business personnel, local litigation counsel and ResCap bankruptcy counsel to determine the applicability of the Supplemental Servicing Order; (ii) fielding inquiries daily from both its outside litigation counsel and its mortgage default counsel regarding the application of the Supplemental Servicing Order (and will continue to do so as new legal actions arise); (iii) assisting chapter 11 counsel

with the preparation of various motions, responses to motions for relief from stay and other Court filings, as well as various bankruptcy related tasks; (iv) assisting chapter 11 counsel and internal business personnel with chapter 11 reporting requirements; (v) assisting with pending and anticipated discovery with respect to the Debtors' proposed settlement with securitization trustees; (vi) assisting with matters pertaining to the two pending sales of the Debtors' assets; and (vii) complying with the Examiner's investigation. As the chapter 11 cases proceed, the Legal Department will take an active role in the plan and disclosure statement process. These responsibilities are ongoing and will continue and no doubt expand as these chapter 11 cases progress.

14. Given the comprehensive and detailed role the Legal Department plays in (i) the managing of the Debtors' litigation and contested foreclosure and bankruptcy matters; (ii) addressing the oversight of said litigation; (iii) responding to daily inquiries from outside litigation counsel and mortgage loan default counsel; and (iv) assisting ResCap's bankruptcy counsel and financial advisors with several tasks associated with the pending sales of the servicing platform, legacy assets, RMBS settlement and attendant litigation, and the Examiner's investigation, not to mention the various motions and other filings in the Debtors' bankruptcy case, carrying out its ordinary course tasks while at the same time discharging its duties in the chapter 11 cases has been and will continue to be a monumental task. Permitting motions and actions seeking only monetary damages that are otherwise stayed by the Debtors' bankruptcy to proceed (not to mention allowing an entirely new contested matter to be commenced as is apparently requested by the Donaghys), therefore, would create a significant burden on the Debtors by adding an additional workload of approximately 496 cases, diverting the Legal



Department's and other critical employees' attention from the critical tasks of running the Debtors' businesses, and significantly increasing the Debtors' out-of-pocket legal costs.

**E. Relief from the Automatic Stay Would Not Result in a Complete Resolution of the Issues**

15. It is my understanding that the request for sanctions contained in the Sanctions Motion was dismissed in connection with the NJ Order. Accordingly, it is my understanding that any further request for sanctions by the Donaghys would have to be asserted in a renewed motion and associated contested matter.

**F. No Insurer has Assumed Responsibility for the California Action**

16. While the Debtors have customary errors and omissions insurance coverage, that insurance does not provide coverage for the types of sanctions apparently requested by the Movants. In the vast majority of the cases, and in connection with requests for sanctions therein, including the Donaghys', the Debtors pay their legal defense fees and costs out-of-pocket. The Debtors would also be required to pay any sanctions award out-of-pocket.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: October 24, 2012

/s/ Jennifer Scoliard  
Jennifer Scoliard  
In-House Senior Bankruptcy Counsel for  
Residential Funding, LLC